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EXAMINER

DINH, TUAN T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROGER Q. SMITH

Appeal 2007-3719
Application 09/153,621
Technology Center 2800

Decided: April 7, 2008

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT,
and JOHN A. JEFFERY, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-6, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

Appellant's invention relates to an audio equipment having a protective bar flexibly connected to a housing, which contains the audio circuitry, such that the risk of damage to the housing is minimized (Spec. 1). An understanding of the invention can be derived from a reading of independent claim 1, which is reproduced as follows:

1. An audio equipment comprising:
 - a housing;
 - an audio circuitry installed within the housing; and
 - a first protective bar flexibly connected to the housing.

The Examiner relies on the following prior art reference:

Healey	US 4,480,809	Nov. 6, 1984
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Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Healey.

Rather than repeat the arguments here, we make reference to the Brief (filed Jul. 1, 2005) and the Answer (mailed Sept. 12, 2006) for the respective positions of Appellant and the Examiner.

We affirm.

ISSUE

Under 35 U.S.C. § 102(b), with respect to the appealed claims 1-6, does Healey anticipate the claimed subject matter by teaching all of the claimed limitations?

PRINCIPLE OF LAW

A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. *See In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (*citing Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

ANALYSIS

Appellant argues that Healy does not disclose an audio circuitry since the disclosed device used for finding fish does not necessarily include an audio signal (Br. 4). Appellant further relies on a definition of the term “thermometer” as “an instrument for determining temperature” to conclude that not all instruments inherently produce music or include audio circuitry (Br. 5). The Examiner responds by stating that the device disclosed in Healey is a sonar instrument and, therefore, includes some type of audio circuitry within the housing (Ans. 5).

Upon a review of Healey, we agree with the Examiner that the disclosed instrument housing is specifically identified as a sonar type depth indicating instrument or the like (col. 1, ll. 7-9). Therefore, the Examiner correctly reads the claimed audio circuitry on the circuitry included in sonar,

which is not a general application “instrument,” but uses sound or audio signals for depth determination. Additionally, the claim does not require any specific type of audio circuitry that may be distinguished over the circuitry of the sonar instrument of Healey. Therefore, to the extent claimed and since sonar relates to auditory wave signals, the Examiner has properly equated the sonar circuitry of Healey as the claimed audio circuitry.

Appellant further argues that Healey’s bracket 12 does not serve to protect the housing, as required in claim 1 (Br. 6). Appellant contends that base 14, which is a part of bracket 12, only serves to support the fishfinder in place (*id.*). The Examiner takes the position that bracket 12 includes the upstanding side portions 16 which, in combination with base 14, protects the housing, at the very least, from damaging mechanical forces that might affect the housing during lifting or handling the instrument (Ans. 5-6).

We agree with the Examiner that the claimed “protective bar” reads on bracket 12 in Healey since the bracket provides some degree of protection to the housing 10 by preventing mechanical forces from the sides and the bottom from damaging the housing. In that regard, Figure 1 of Healey shows the position of bracket 12 to be at a distance from housing 10, which provides some degree of protection to the housing. As asserted by the Examiner (Ans. 6), any level of protection makes bracket 12 a “protective bar” since the degree of protection is not claimed.

Lastly, Appellant argues that bracket 12 of Healey is not flexibly connected to the housing and, in support of such assertion, provides a declaration made by Michael L. O’Banion under 37 C.F.R. § 1.132.

Appellant's position, as reflected in the § 132 declaration (paragraphs 10-11), is that Healey connects bracket 12 to housing 10 through resilient washers 30 and 38 such that knob 34 and trunnion 26 compresses the washers to the extent that the washers cannot absorb any shock force exerted from falling tools on the housing or dropping the housing (Br. 6-7). The Examiner responds by pointing to the flexible washers disposed between the housing and the side portion 16 as the claimed flexible connection and adds that using knob 34 to adjust bracket 12 provides additional flexibility to its connection to the housing (Ans. 6).

The claimed "flexibly connected" does not specify the degree of flexibility required and, therefore, allows for any degree of flexibility such as that obtained from Healey's device. While compression may reduce flexibility of the resilient washers 30 and 38, the washers remain somewhat flexible as they are positioned between the bracket and the housing or knobs (col. 2, ll. 46-64). We also agree with the Examiner that the ability to change the angular position of the housing without removing the knobs (col. 3, ll. 4-8) provides an additional degree of flexibility to the connection between the bracket and the housing.

Based on our review of Healey and the discussion of Healey provided by Appellant in the § 132 declaration, we agree with the Examiner that using resilient washers and the adjustability of the bracket by turning knob 34 provides sufficient flexibility to the connection between bracket 12 and housing 10. Additionally, as discussed above, the bracket disclosed in Healey does protect the housing from some level of mechanical force.

Therefore, we find that the statements made in the § 132 declaration are not commensurate with the scope of the rejected claims. As such, the probative value of the statements made in the § 132 declaration are outweighed by the teachings of Healey in view of the breadth of the claimed subject matter.

We also remain unconvinced by Appellant's discussion of the specific forces that the claimed protective bar is capable of withstanding and protecting the housing against (Br. 7; Decl. Paragraph 12). Such statements cannot overcome the stated rejection since none of the identified situations, in which protection may be needed, are relevant when they are not a part of the claims, or when the applied prior art reference discloses all the claimed structural features.

In view of the above discussions and our findings with respect to the teachings of Healey, since Appellant's declaration under 37 C.F.R. § 1.132 is not effective to rebut the Examiner's reading the claimed subject matter on the sonar type instrument of Healey, we do not find error in the Examiner's anticipation rejection of claim 1. Accordingly, the Examiner's 35 U.S.C. § 102(b) rejection of claim 1, as well as claims 2-6 argued together with their base claim 1, as anticipated by Healey is sustained.

CONCLUSION

On the record before us and in view of our analysis above, the Examiner's decision rejecting claims 1-6 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

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AFFIRMED

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